

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELLIOT MCGUCKEN, an individual,

Plaintiff,

v.

NEWSWEEK LLC, a New York Limited
Liability Company; and DOES 1-10, inclusive,

Defendants.

Civil Action No.: 1:19-cv-09617-KPF

**DECLARATION OF ELLIOT
MCGUCKEN**


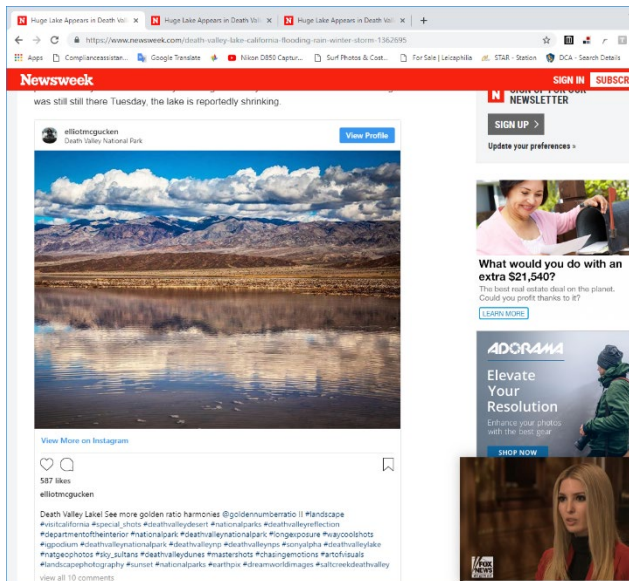
DECLARATION OF ELLIOT MCGUCKEN

I, Elliot McGucken, hereby declare as follows:

1. I am above eighteen (18) years of age and am competent to give the testimony set forth below. Said testimony is given from my own personal knowledge. I make this declaration in support of Plaintiff's Motion for Summary Judgment. If called as a witness, I could and would competently testify as set forth below.
2. I am the plaintiff in this action. I am a fine art photographer, author, and scholar based in Los Angeles, California. I am the author of a large portfolio of fine art photographic works, many of which have been featured in publications such as *Nikon-Photo Magazine*, *Smithsonian Magazine*, *National Parks Magazine*, *SFGate*, and *Daily Mail*.
3. I traveled at my own expense to Death Valley in March 2019, where I photographed a natural phenomenon of an ephemeral lake, creating multiple works in which it was the subject. One of the photographs I created is the photograph at issue in this action (the "Subject Photograph"). I have attached as **Exhibit 1** a true and correct copy of the Subject Photograph.
4. I registered the Subject Photograph with the United States Copyright Office and received an approved registration certificate. The Subject Photograph was registered on April 1, 2019 and allocated U.S. Copyright Registration Number VA 2-145-698. Attached hereto as **Exhibit 2** is a true and correct copy of the copyright registration certificate for the Subject Photograph.
5. I published the Subject Photograph on my Instagram account on or around on March 13, 2019. A representative from Defendant Newsweek Digital LLC ("Newsweek") requested permission to exploit the Subject Photograph. I did not authorize Newsweek to exploit

the Subject Photograph in any way. Attached hereto as **Exhibit 3** is a true and correct copy of the correspondence concerning Newsweek’s efforts to obtain a license.

6. In April 2019, I discovered that an article exploiting the Subject Photograph (“Infringing Post”) was, without my permission, being published and displayed by Newsweek on its website. I did not authorize this use of the Subject Photograph, and certainly had not entered into any licensing or royalty agreement that would allow the Subject Photograph to be exploited on the Infringing Post. Attached hereto as **Exhibit 4** is a true and correct copy of the Infringing Post as it appeared on Newsweek’s website.
7. The below makes it clear that a verbatim copy of my work was reproduced, displayed, and published on the Infringing Post on Newsweek’s website, as seen in the true and correct images set forth below:

Subject Photograph:	Infringing Article:
	

8. I have previously licensed my original photography depicting my perspective of a Death Valley earthscape, including the Subject Photograph, to SF Gate, The Daily Mail, the

National Parks Conservation Association, PetaPixel, Smithsonian Magazine, AccuWeather, Atlas Obscura, and Live Science. Attached hereto as **Exhibit 18** is a true and correct copy of representative communications concerning my licensing with these publications.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Executed on May 21, 2021 in Los Angeles, California.

By: Elliot McGucken
Elliot McGucken
Declarant